IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.622 of 2008

1. INDRADEO LAL
2. NIRANJAN LAL
3. JAI PRAKASH LAL
4. DINESH LAL

…..Petitioners

Versus

STATE OF BIHAR ….Opposite party

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2. 11.12.2008. This revision has been preferred against the order dated 30.4.2008 passed by Additional Sessions Judge, F.T.C. IV, Nawada in Session Trial No. 342 of 2007 thereby the petition dated 21.2.2008 filed by this petitioner not to examine Pinki Kumari as witness has been rejected.

Heard learned counsel for the petitioner.

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The submission of learned counsel for the petitioner is that at the stage of the enquiry evidence of Pinki Kumari was not recorded as she had no understanding to understand the question. Therefore, now the prosecution cannot examine this witness. For that he has referred Section 118 of the Indian Evidence Act.

Considered the submission of learned counsel for the petitioner and perused section 118 of the Indian Evidence Act.

On perusal of said section it is quite apparent that competency of the person to give evidence is determined at the time of deposition. It does not mean that if at earlier stage the

petitioner was not found competent to depose by virtue of tender age, cannot depose at subsequent stage of the trial when he attains the age of competency.

Under the facts and circumstances, I find no illegality in the impugned order. Accordingly, this application is rejected.

kanchan **(Ghanshyam Prasad, J.)**

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